

NORTH CAROLINA

DARE COUNTY

DANIEL SARGENT and  
LINDORA SARGENT,  
Plaintiffs

v.  
NORTH CAROLINA FARM )  
BUREAU MUTUAL )  
INSURANCE COMPANY, INC. )  
COLONIAL CLAIMS )  
CORPORATION )  
Defendant )

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO. 09-CVS-917

BPA

AFFIDAVIT OF SERVICE  
(Pursuant to NCGS § 1-75.10)

A TRUE COPY  
CLERK OF SUPERIOR COURT  
DARE COUNTY

BY *Beth Melvin*  
Assistant Deputy Clerk Superior Court

The undersigned, as attorney for Plaintiffs, being duly sworn, deposes and says as follows:

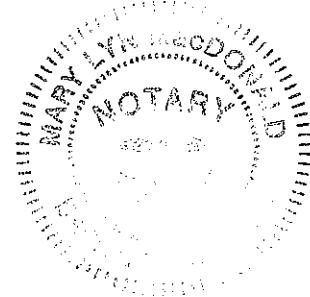
1. That I am attorney duly licensed to practice law within the State of North Carolina and is the attorney for the Plaintiff in the above entitled case.
2. That a civil summons and Complaint was issued on October 7, 2009 and a copy of the same was subsequently served on the Defendant on October 13, 2009 by Certified Mail, Return Receipt Requested. Attached as Exhibit A is the returned receipt evidencing that a copy of the same was in fact received by Defendant.

This the 19<sup>th</sup> day of October, 2009.

*CASEY & RAGALLER, P.L.L.C.*

Matthew J. Ragaller  
Attorney for Plaintiffs  
Post Office Box 28  
Nags Head, NC 27959  
Tel: (252) 441-4125

Subscribed and sworn to before me this the 19th of October, 2009.



*Mary Lee Macdonald*  
Notary Public  
My commission expires: 11/12/09

## EXHIBIT A

**U.S. Postal Service™  
CERTIFIED MAIL™ RECEIPT**  
*(Domestic Mail Only; No Insurance Coverage Provided)*

For delivery information visit our website at [www.usps.com](http://www.usps.com).

<b>OFFICIAL USE</b>	
Postage	\$ 1.05
Certified Fee	2.80
Return Receipt Fee (Endorsement Required)	2.30
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 6.15

Postmark  
RALEIGH, NC  
10-13-07  
USPS

Sent to: NC Farm Bureau Mutual Ins. Co.  
 Street, Apt. No.:  
 or PO Box No.: c/o Julian Philpot, Jr.  
 City, State, ZIP+4: P.O. Box 27427, Raleigh, NC 27611-7427

PS Form 3800, August 2006

See Reverse for Instructions

<b>SENDER: COMPLETE THIS SECTION</b>	
<ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	
1. Article Addressed to: NC Farm Bureau Mutual Ins. Co., Inc., Colonial Claims Corp. c/o H. Julian Philpot, Jr. Registered Agent P.O. Box 27427 <u>Raleigh, NC 27611-7427</u>	
<b>COMPLETE THIS SECTION ON DELIVERY</b>	
A. Signature <u>NC FARM BUREAU MUTUAL INSURANCE CO. c/o Julian Philpot, Jr.</u> <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee B. Received by <input type="checkbox"/> Mailed Name <u>H. JULIAN PHILPOT JR.</u> C. Date of Delivery <u>10-13-07</u> If delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
3. Service Type <input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
7007 1490 0005 0234 8127	

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

NORTH CAROLINA  
DARE COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO. 09-CVS-917

DANIEL SARGENT and )  
LINDORA SARGENT, )  
Plaintiffs )  
v. )  
NORTH CAROLINA FARM )  
BUREAU MUTUAL )  
INSURANCE COMPANY, INC. )  
COLONIAL CLAIMS )  
CORPORATION )  
Defendant )

AFFIDAVIT OF SERVICE  
(Pursuant to NCGS § 1-75.10)

A TRUE COPY  
CLERK OF SUPERIOR COURT  
DARE COUNTY

BY *Beth Meek*  
Assistant Deputy Clerk Superior Court

The undersigned, as attorney for Plaintiffs, being duly sworn, deposes and says as follows:

1. That I am attorney duly licensed to practice law within the State of North Carolina and is the attorney for the Plaintiff in the above entitled case.
2. That a civil summons and Complaint was issued on October 7, 2009 and a copy of the same was subsequently served on the North Carolina Department of Insurance, Commissioner of Insurance on October 13, 2009 by Certified Mail, Return Receipt Requested. Attached as Exhibit A is the returned receipt evidencing that a copy of the same was in fact received by Defendant.

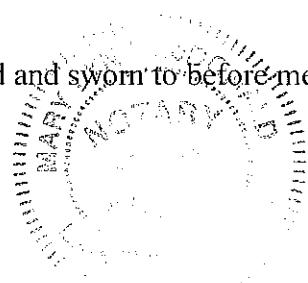
This the 19<sup>th</sup> day of October, 2009.

*CASEY & RAGALLER, P.L.L.C.*

Matthew J. Ragaller  
Attorney for Plaintiffs  
Post Office Box 28  
Nags Head, NC 27959  
Tel: (252) 441-4125

Subscribed and sworn to before me this the 19th of October, 2009.

*Marylyn McDonald*  
Notary Public  
My commission expires: 11/12/2009



## EXHIBIT A

**U.S. Postal Service™  
CERTIFIED MAIL™ RECEIPT  
(Domestic Mail Only; No Insurance Coverage Provided)**

For delivery information visit our website at [www.usps.com](http://www.usps.com)

<b>OFFICIAL USE</b>	
Postage	\$ 1.05
Certified Fee	2.80
Return Receipt Fee (Endorsement Required)	2.80
Restricted Delivery Fee (Endorsement Required)	0.00
Total Postage & Fees	\$ 6.15

Postmark  
Here  
USPS

Sent To: North Carolina Ins. Commission  
 Street, Apt. No.: 10 Wayne Goodwin, Commissioner  
 City, State, Zip: 430 Salisbury St. Raleigh NC 27603

See Reverse for Instructions

PS Form 3800, August 2006

<b>SENDER: COMPLETE THIS SECTION</b>		<b>COMPLETE THIS SECTION ON DELIVERY</b>	
<ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>		<p>A. Signature</p> <p><b>X</b></p> <p>B. Received by (Printed Name) <span style="float: right;">C. Date of Delivery</span></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  <small>If YES, enter delivery address below:</small></p> <p style="text-align: center; border: 1px solid black; padding: 5px; margin-top: 10px;">RECEIVED BY OCT 13 2009</p> <p>3. Service Type  <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail  <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
1. Article Addressed to: <b>N.C. Insurance Commission c/o Wayne Goodwin, Commissioner 430 N. Salisbury St. MAIL Raleigh, NC 27603-5937</b>		2. Article Number <small>(Transfer from service label)</small> <b>7007 1490 0005 0234 8110</b>	
PS Form 3811, February 2004		Domestic Return Receipt	
		102595-02-M-1540	

**STATE OF NORTH CAROLINA**

File No.

09 CVS 917

Dare County

In The General Court Of Justice  
 District  Superior Court Division

**Name Of Plaintiff**

Daniel Sargent and Lindora Sargent

**Address**

1 Pearl Street

**City, State, Zip**

Whitehouse Station, NJ 08889

**VERSUS****Name Of Defendant(s)**

North Carolina Farm Bureau Mutual Insurance Company, Inc.

Colonial Claims Corporation

**CIVIL SUMMONS****□ ALIAS AND PLURIES SUMMONS**

G.S. 1A-1, Rules 3, 4

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

**To Each Of The Defendant(s) Named Below:****Name And Address Of Defendant 1**

North Carolina Farm Bureau Mutual Insurance Company, Inc.  
 Colonial Claims Corporation, c/o H. Julian Philpott, Jr., Registered  
 Agent, P.O. Box 27427  
 Raleigh, NC 27611-7427

**Name And Address Of Defendant 2****A Civil Action Has Been Commenced Against You!**

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

**Name And Address Of Plaintiff's Attorney (If None, Address Of Plaintiff)**

Matthew J. Ragaller  
 Casey & Ragaller, PLLC  
 P.O. Box 28  
 Nags Head, NC 27959

Date Issued	Time
10-7-09	3:08 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM
Signature	
Beth Martin	
<input checked="" type="checkbox"/> Deputy CSC	<input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court

 **ENDORSEMENT**

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement	Time
	<input type="checkbox"/> AM <input type="checkbox"/> PM
Signature	
<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court	

**NOTE TO PARTIES:** Many counties have **MANDATORY ARBITRATION** programs in which most cases where the amount in controversy is \$15,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned to mandatory arbitration, and, if so, what procedure is to be followed.

**A TRUE COPY**  
**CLERK OF SUPERIOR COURT**  
**DARE COUNTY**  
*Beth Martin*

## STATE OF NORTH CAROLINA

Date

County

File No.

09 CVS 917

In The General Court Of Justice  
 District  Superior Court Division

## Name And Address Of Plaintiff 1

Daniel Sargent  
1 Pearl Street  
Whitehouse Station, NJ 08889

## Name And Address Of Plaintiff 2

Lindora Sargent  
1 Pearl Street  
Whitehouse Station, NJ 08889

## VERSUS

## Name Of Defendant 1

North Carolina Farm Bureau Mutual Insurance Company, Inc.  
Colonial Claims Corporation

## Summons Submitted

 Yes  No

## Name Of Defendant 2

## Summons Submitted

 Yes  No

Jury Demanded In Pleading  
 Complex Litigation

## TYPE OF PLEADING

(check all that apply)

- Amended Answer/Reply (AMND-Response)
- Amended Complaint (AMND)
- Answer/Reply (ANSW-Response)
- Complaint (COMP)
- Confession of Judgment (CNFJ)
- Counterclaim vs. (CTCL)
  - All Plaintiffs  Only (List on back)
- Crossclaim vs. (List on back) (CRSS)
- Extend Statute of Limitations, Rule 9 (ESOL)
- Extend Time For Answer (MEOT-Response)
- Extend Time For Complaint (EXCO)
- Rule 12 Motion In Lieu Of Answer (MDLA)
- Third Party Complaint (List Third Party Defendants on Back) (TPCL)
- Other: (specify)

NOTE: Small claims are exempt from cover sheets.

Date

Signature Of Attorney/Party

NOTE: The initial filing in civil actions shall include as the first page of the filing a cover sheet summarizing the critical elements of the filing. The Clerk of Superior Court, Administrative Office of the Courts, and the Clerk of Superior Court shall require a party to refile a filing which does not include the required cover sheet. For subsequent filings in civil actions, the filing party must either include a cover sheet or the filing must comply with G.S. 7A-34.1.

## GENERAL

## CIVIL ACTION COVER SHEET

Bm  INITIAL FILING  SUBSEQUENT FILING

Rule 5(b), Rules of Practice For Superior and District Courts

Name And Address Of Attorney Or Party, If Not Represented (complete for initial appearance or change of address)

Matthew J. Ragaller

P.O. Box 28

Nags Head, NC 27959

Telephone No.

252-441-4125

Cell Telephone No.

252-441-4126

NC Attorney Bar No.

32306

Attorney E-Mail Address

mragaller@nagsheadlaw.com

 Initial Appearance in Case Change of Address

Name Of Firm

Casey &amp; Ragaller, PLLCC

FAX No.

252-441-4126

Counsel for

 All Plaintiffs  All Defendants  Only (List party(ies) represented)

- Amount in controversy does not exceed \$15,000
- Stipulate to arbitration

## CLAIMS FOR RELIEF FOR:

(check all that apply)

- Administrative Appeal (ADMA)
- Appointment of Receiver (APRC)
- Attachment/Garnishment (ATTC)
- Claim and Delivery (CLMD)
- Collection on Account (ACCT)
- Condemnation (CNDM)
- Contract (CNTR)
- Discovery Scheduling Order (DSCH)
- Injunction (INJU)
- Medical Malpractice (MDML)
- Minor Settlement (MSTL)
- Money Owed (MNYO)
- Negligence - Motor Vehicle (MVNG)
- Negligence - Other (NEGO)
- Motor Vehicle Lien G.S. 44A (MVLN)
- Limited Driving Privilege - Out-of-State Convictions (PLDP)
- Possession of Personal Property (POPP)
- Product Liability (PROD)
- Real Property (RLPR)
- Specific Performance (SPPR)
- Other: (specify)

A TRUE COPY

CLERK OF SUPERIOR COURT  
DARE COUNTYBy *Beth Mule*

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF DARE

SUPERIOR COURT DIVISION  
FILE NO. 09-CVS- 917

DANIEL SARGENT AND LINDORA

Bm

SARGENT,

Plaintiffs,

vs.

NORTH CAROLINA FARM BUREAU

MUTUAL INSURANCE COMPANY, INC.

COLONIAL CLAIMS CORPORATION,

Defendants.

) COMPLAINT

NOW COME, the Plaintiffs, by and through counsel, complaining of the acts of Defendants, allege and say as follows:

1. Plaintiff Daniel Sargent is a citizen and resident of Whitehouse Station, New Jersey.

2. Plaintiff Lindora Sargent is a citizen and resident of Whitehouse Station, New Jersey.

3. Upon information and belief Defendant, North Carolina Farm Bureau Mutual Insurance Company, Inc. (hereinafter "Farm Bureau") is a corporation organized and existing under and by virtue of the laws of the state of North Carolina, with its principal place of business in Dare County, North Carolina.

4. Upon information and belief Defendant, Colonial Claims Corporation (hereinafter "Colonial") is a corporation organized and existing under and by virtue of the laws of the state of Florida, with its principal place of business in Dunedin, Florida.

5. Plaintiffs are the owners of certain real property located at 23221 Sea Haven Lane, Salvo, North Carolina.

6. On or about April 9<sup>th</sup>, 2008 the Plaintiff and Defendants entered into a contract whereby the Plaintiff would provide certain monetary payments to the Defendants in the event of certain happenings.

7. In exchange for performing the services described in paragraph 5, above, the Plaintiff was to receive the benefits contained in the contract/insurance policy, attached hereto as Plaintiffs' Exhibit 1 in regard to their Rodanthe property.

A TRUE COPY  
CLERK OF SUPERIOR COURT  
DARE COUNTY

BY *Beth Martin*  
Assistant Deputy Clerk Superior Court

8. The Plaintiffs completed all of the services required of it within the timeframe required.

9. On or about June 30, 2008 the Plaintiffs received a telephone call from Surf or Sound Realty, a local real estate and property management company, informing them that the tenants of the Rodanthe property had reported waves breaking under the property and that the residence was shaking violently.

10. The tenants had to be evacuated from the property due to the conditions they had reported.

11. On July 1, 2008, the Plaintiffs telephoned Defendant Farm Bureau to notify them of the reported damage and to initiate a claim on their contract with Defendants.

12. On July 2, 2008 the Plaintiffs received a telephone call from a Tyrone McGuire, who upon information and belief is an adjuster employed by the Defendants to discuss the Plaintiffs' claim and schedule an inspection of the property.

13. On July 3, 2008 the Plaintiff's contacted the Defendants to inquire whether there was anything else they needed to do and were informed that they needed to wait for answers from the adjuster.

14. On July 8, 2008, Plaintiffs received a telephone call from Tyrone McGuire, an adjuster employed by the Defendants, informing them that he had inspected the property and did not find any evidence of damage to the property and was in fact structurally sound.

15. Due to the reports of the tenants, the property's management company refused to rent the property until an engineer certified that it was structurally sound.

16. On July 11, 2008, the Plaintiffs met with counsel to determine how to resolve the situation.

17. On July 15, 2008 Plaintiffs contacted Farm Bureau to obtain the contact information on Mr. McGuire, the adjuster referred to above.

18. On July 18, 2008 Plaintiffs received a telephone call from Mr. McGuire informing him that Dan McGuire was the adjuster who inspected the property and issued the opinion that the property was in excellent shape.

19. On July 18, 2008, Plaintiffs contacted Dan McGuire in order to have an engineer inspect the property and inquired what information would be required by the Defendants in order for them to send an engineer to inspect the property.

20. On July 21, 2008, Dan McGuire informed the Plaintiffs what was required by the Defendants in order for them to send an engineer to inspect the property.

21. On July 22, 2008, the Plaintiffs obtained the required information and telephoned Dan McGuire to notify him of the same.

22. On August 8, 2008, the Defendants sent Jason Grover of U.S. Forensic to inspect the property.

23. On or about September 5, 2008, Jason Grover completed his evaluation and report on the Plaintiffs' property.

24. On September 10, 2008 the Plaintiffs contacted the Defendants regarding the timeline for the completion of the U.S. Forensic report and were informed that it was being finalized and would be ready for review shortly.

25. On September 17, 2008, the Plaintiffs contacted U.S. Forensic directly to ascertain the completion date of their report and were informed that it had been sent to the Defendants approximately two weeks prior.

26. On September 26, 2008 the Plaintiffs received a copy of the U.S. Forensic report, a copy of which is attached hereto as Exhibit 2.

27. In said report, U.S. Forensic does note structural damage to the property and attributes the damage to a construction defect dating to the original construction of the property in 2004.

28. The defect referred to in paragraph 26 above, was their belief that the houses pilings were not installed in accordance with the applicable building codes in effect at the time of construction for Dare County.

29. Plaintiffs contacted U.S. Forensic on September 27, 2008 to verify that the defect referred to in the report was that the pilings were not installed according to the applicable building code when the house was built and that was confirmed by U.S. Forensic.

30. Also on September 27, 2008 the Plaintiffs contacted the Dare County Building Inspector to ascertain whether there were any records on file showing that Dare County had inspected the property's pilings and that they were installed in accordance with the applicable building code at that time.

31. The same day Dare County faxed the Plaintiffs a copy of the certification showing that the County had inspected the pilings and that they were installed in accordance with the applicable building codes at that time.

32. On September 29, 2008, the Plaintiffs contacted U.S. Forensic to inform them that the pilings had been installed according to the applicable building codes and that they were in possession of the verification from Dare County.

33. On October 1, 2008 the Plaintiffs contacted Defendant Colonial Claim Corporation to inform them of the inaccuracy of the U.S. Forensic report denying coverage based upon the alleged construction defect.

34. On Friday October 10, 2008, the Plaintiffs contacted Colonial Claims in order to verify that they had received the verification from Dare County showing that the pilings had been installed according to the applicable building codes and that was confirmed.

35. On or about October 19, 2008, the Plaintiffs residence collapsed into the Atlantic Ocean, due to the failure of the Defendants to acknowledge the Plaintiffs' claim and perform the necessary repairs that would have allowed the residence to remain.

#### **FIRST CLAIM FOR RELIEF**

36. The allegations contained in paragraphs one through thirty five are incorporated by reference as if fully set forth herein.

37. Pursuant to the Contract, Plaintiff made the payments required of them to the Defendants.

38. Under the Contract between Plaintiff and Defendants, Defendants agreed to insure the Plaintiffs property against certain issues and events.

39. Plaintiff has completed substantially all of the services contemplated under the Contract and the same have been accepted and approved by Defendants. Defendants have failed to honor and perform their obligations under the contract. Defendants' breach of contract has damaged the Plaintiffs in excess of \$10,000.

#### **SECOND CLAIM FOR RELIEF**

39. The allegations contained in paragraphs one through thirty eight above, are incorporated by reference as if fully set forth herein.

40. The Defendants wrongfully refused to pay the valid claim of the Plaintiffs under the contract regarding the repair of the damage noted in the U.S. Forensic report.

41. The Defendants have acted in bad faith in their dealings with the Plaintiffs in refusing to honor their claim.

42. Upon information and belief the Defendants refused payment on the Plaintiffs' claim in order to delay the benefits that the Plaintiffs are entitled to under the contract and to allow the property to fall into the Atlantic Ocean, thereby minimizing the amount of the claim.

43. Based upon the wrongful conduct of the Defendants, the Plaintiffs have been damaged in excess of \$10,000.

WHEREFORE, Plaintiff prays the Court for the following relief:

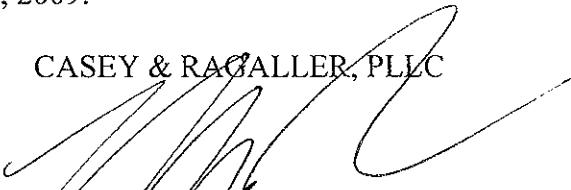
1. That it have and recover judgment against Defendants in an amount to be proven in trial, said amount being in excess of \$10,000.

2. That it have and recover all damages associated with the Defendants' breach of contract and bad faith.

3. That it have and recover its costs, including reasonable attorney fees, in this action.

4. That it have such other and further relief as the Court deems just and proper.

This the 7<sup>th</sup> Day of October, 2009.

CASEY & RAGALLER, PLLC  
  
Matthew J. Ragaller  
Attorneys for Plaintiffs  
Post Office Box 28  
Nags Head, NC 27915  
(252) 441-4125  
State Bar No. 32306

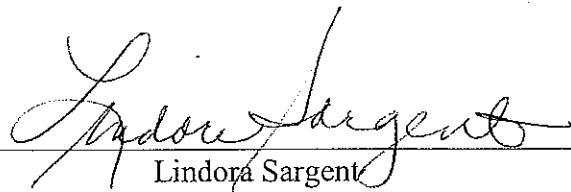
NORTH CAROLINA  
DARE COUNTY

**VERIFICATION**

I, Lindora Sargent , being duly sworn, deposes and says:

That she is the Plaintiff in the foregoing matter; that she has read the foregoing Complaint; that the contents thereof are true to her own knowledge, except as to matters stated on information and belief and as to those matters she believes them to be true.

This the 20<sup>th</sup> day of September, 2009.

  
\_\_\_\_\_  
Lindora Sargent

SWORN TO AND SUBSCRIBED BEFORE ME  
THIS THE 20<sup>th</sup> DAY OF September, 2009

Nancy M. Keates  
Notary Public  
My commission expires:

\_\_\_\_\_  
Notary Public  
State of NJ  
Nancy M. Keates  
My Commission Expires 10-2009

NORTH CAROLINA  
DARE COUNTY

**VERIFICATION**

I, Daniel Sargent , being duly sworn, deposes and says:

That he is the Plaintiff in the foregoing matter; that he has read the foregoing Complaint; that the contents thereof are true to his own knowledge, except as to matters stated on information and belief and as to those matters he believes them to be true.

This the 20<sup>th</sup> day of September, 2009.

Daniel J. Sargent  
Daniel Sargent

SWORN TO AND SUBSCRIBED BEFORE ME  
THIS THE 20<sup>th</sup> DAY OF September, 2009

Nancy M. Keates

Notary Public

My commission expires:

\_\_\_\_\_  
Notary Public  
State of NJ  
Nancy M. Keates  
My Commission Expires 10-20-2009